

ORIGINAL

LAW OFFICES  
LEVENTHAL, SENTER & LERMAN P.L.L.C.  
SUITE 600  
2000 K STREET, N.W.  
WASHINGTON, D.C. 20006-1809

TELEPHONE  
(202) 429-8970

TELECOPIER  
(202) 293-7783

May 11, 2001

RECEIVED

WWW.LSL-LAW.COM

BARBARA K. GARDNER

MAY 11 2001

DIRECT DIAL  
(202) 416-6755

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
E-MAIL  
BGARDNER@LSL-LAW.COM  
DIRECT FAX  
(202) 429-4603

**VIA HAND DELIVERY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-B204  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: **Reply Comments of Viacom Inc.  
In the Matter of Nondiscrimination in the Distribution of  
Interactive Television Services Over Cable  
CS Docket No. 01-7**

Dear Ms. Salas:

Enclosed please find an original and four copies of the Reply Comments of Viacom Inc. in the above-referenced proceeding. A diskette containing an electronic version of this filing is being submitted under separate cover.

Kindly direct all questions regarding this matter to the undersigned.

Respectfully submitted,

*Barbara K. Gardner*

Barbara K. Gardner

Enclosure  
cc with encl.:  
Anne Lucey, Esq.

No. of Copies rec'd  
List ABCDE

024

RECEIVED

MAY 11 2001

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Nondiscrimination in the Distribution of ) CS Docket No. 01-7  
Interactive Television Services Over Cable )

**REPLY COMMENTS OF VIACOM INC.**

Viacom Inc. ("Viacom"), the owner of non-vertically integrated cable and broadcast programming networks, hereby replies to the comments of other parties on the Commission's *Notice of Inquiry*<sup>1</sup> in the captioned proceeding.<sup>2</sup> As the *NOI* anticipates and many commenters urge, the Commission should act now to safeguard the development of interactive television ("ITV") services by applying nondiscrimination policies to all vertically integrated MVPDs.

DISCUSSION

A principal argument of opponents of regulatory intervention to preserve consumer choice in interactive services is that ITV is far too undeveloped for appropriate

<sup>1</sup> *Nondiscrimination in the Distribution of Interactive Television Services Over Cable, Notice of Inquiry*, CS Docket No. 01-7, FCC 01-15 (rel. Jan. 18, 2001) ("*NOI*").

<sup>2</sup> Viacom was a signatory to the March 19, 2001 initial Comments of The Non-MVPD Owned Programming Networks, but has elected to file these Reply Comments independently of that group.

regulations to be formulated.<sup>3</sup> Viacom disagrees; the case for early action by the Commission is far more compelling than that for inaction. Timely intervention to preserve competition may avoid more intrusive intervention later. Commenters agree that attempting after the fact to undo the effects of discrimination is more onerous than preventing it in the first place.<sup>4</sup>

In addition, because the development of ITV technology is sufficiently underway, now is the time for program providers, such as Viacom's numerous cable and broadcast networks, to invest heavily in the creation of interactive content. As documented extensively in the record of this proceeding by parties on both sides of the regulatory intervention debate, it is undisputed that the development of interactive television services is already in progress and is proceeding rapidly.<sup>5</sup> Accordingly, like many of its counterpart program suppliers that serve mass as well as niche markets, Viacom is poised to make significant capital investments — entailing substantial financial risks — to bring interactive services to the viewing public.

As the Commission is well aware, based on its experience with the rollout of digital television, the availability of content is critical to the development and deployment of new technologies.<sup>6</sup>

---

<sup>3</sup> See, e.g., Comments of NCTA at 2-3, 7-14; Comments of AOL Time Warner at 3-8, 16-18.

<sup>4</sup> Comments of MSTV at 2, 5-6; Comments of NAB at 6-7.

<sup>5</sup> See, e.g., Comments of AOL Time Warner at 4-7, 10-11, 13-14; Comments of The Non-MVPD Owned Programming Networks at 3-7.

<sup>6</sup> *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order and Further Notice of Proposed Rule Making*, FCC 01-24 at para. 11 (rel. Jan. 19, 2001); *Digital Television Transition*, Presentation to the FCC by Roy Stewart, Chief, Mass Media Bureau, at 1, 7 *continued*

Yet, it makes little business sense for content providers such as Viacom to invest heavily in a new service where entry barriers are far higher for some entrants — in this case, non-vertically integrated program networks like Viacom's — than they are for others. Commenters have established that vertically integrated MVPDs have the technical opportunity and economic incentive to disable or degrade unaffiliated ITV triggers and content, and to engage in other anticompetitive conduct in the provision of ITV services.<sup>7</sup>

Vertically integrated MVPDs have neither denied that such anticompetitive opportunities and incentives exist, nor pledged that they will provide nondiscriminatory treatment of unaffiliated content. Safeguards are thus needed, in the form of general nondiscrimination requirements, to remove a significant barrier to investment in ITV services faced by content providers unaffiliated with MVPDs.

While Viacom does not believe it should be government's role to ensure the marketplace survival of any particular technology, or of any particular provider of communications services, it *is* incumbent upon the Commission "to encourage the provision of new technologies and services to the public."<sup>8</sup> ITV is particularly deserving of such encouragement, since, as the *NOI* acknowledges, it "is a rapidly-developing service that could provide tremendous value to American consumers."<sup>9</sup>

---

(April 19, 2001) (available at [www.fcc.gov/dtv/dtv\\_presentation.pdf](http://www.fcc.gov/dtv/dtv_presentation.pdf)). Viacom, through its CBS Television Network, is an acknowledged leader in the development of DTV content. *Digital Television Transition* at 7.

<sup>7</sup> See, e.g., Comments of ALTV at 10-11; Comments of MSTV at 4-5; Comments of NAB at 15-16.

<sup>8</sup> 47 U.S.C. § 157(a).

<sup>9</sup> *NOI* at 1.

It is important to delineate what Viacom is *not* requesting of the Commission, or of vertically integrated MVPDs. First, we are not seeking either a “must-carry” or “open access” paradigm for ITV services supplied by unaffiliated providers.

Second, Viacom does not urge FCC intervention only with respect to vertically integrated *cable operators*. Instead, we advocate a technologically neutral solution that would be directed to vertically integrated MVPDs of any type.

Finally, Viacom does not seek heavy-handed regulation, but intervention with a light touch: a simple non-discrimination rule requiring vertically integrated MVPDs to pass through and not degrade or otherwise discriminate against the ITV services of unaffiliated programmers if they are passing through the ITV services of affiliated programmers. Such a principle should be enforced by the Commission.

## CONCLUSION

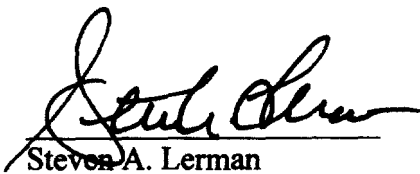
To assure that consumer choice is not restricted by vertically integrated program distributors that favor affiliated content and services, the Commission should move immediately toward initiating a rule making proceeding that proposes the adoption of a nondiscrimination principle in the provision of ITV services.

Respectfully submitted,

VIACOM INC.

Anne Lucey, Esq.  
Vice President of  
Regulatory Affairs  
Viacom Inc.  
1501 M Street, N.W.  
Suite 1100  
Washington, D.C. 20005  
(202) 785-7300

May 11, 2001

By:   
Steven A. Lerman

By:   
Barbara K. Gardner

Leventhal, Senter & Lerman P.L.L.C.  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006-1809  
(202) 429-8970

Its Attorneys